

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

1 ANTONIO RIVERA DIAZ, et al., '

2 Plaintiffs, '

3 v. CIVIL NO. 98-2202 (RLA)

4 AMERICAN AIRLINES, '

5 Defendant. '

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U.S. DISTRICT COURT
SAN JUAN, PR

8 ORDER DISMISSING COMPLAINT

9 This action was instituted by ANTONIO RIVERA-DIAZ and his
10 daughter seeking retroactive payment of early retirement benefits
11 for RIVERA-DIAZ as well as damages under both ERISA and the local
12 torts provision. The Court having reviewed the documents in file
13 hereby finds that plaintiffs have no viable claim and therefore, the
14 complaint must be dismissed.

15 ~~BACKGROUND~~

16 Plaintiffs have consistently failed to comply with the
17 procedural requirements of our Amended Standing Order regarding
18 dispositive motions.¹ Therefore, defendant's Motion to Dismiss²
19 stands unopposed.

21

22 ¹ See Order issued on February 12, 1999 (docket No. 6);
23 Omnibus Order issued on March 4, 1999 (docket No. 9); Order Setting
24 Deadline for Service of Opposition to Motion to Dismiss, issued on
25 June 1, 1999 (docket No. 13); Order issued on July 20, 1999 (docket
26 No. 17) and Minutes of Settlement Conference Held on August 25, 1999
 (docket No. 20).

27 ² See also Reply... tendered on July 27, 1999. Leave to file
28 the reply is GRANTED.

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1 The uncontroverted evidence in the file indicates that
2 plaintiff RIVERA was discharged from employment with AMERICAN
3 AIRLINES in **1991**.
4

5 RIVERA-DIAZ was vested under the plan as of the date of
6 termination.

7 AMERICAN AIRLINES³ sent RIVERA two notices of vested rights in
8 1993 and 1995 advising RIVERA of his eligibility to receive pension
9 benefits. These notices were sent via regular first class mail.
10 Apparently, due to abbreviations and/or errors in the mailing
11 address plaintiff did not receive the aforementioned notices.
12

13 Plaintiff has never requested payment of benefits. The first
14 time RIVERA-DIAZ requested payment of benefits was through these
15 proceedings instituted in **1998**. Defendant concedes plaintiff is
16 entitled to payment of benefits but limited to prospective payment
17 and conditioned on plaintiff submitting the pertinent claim.
18

MOTION TO DISMISS

19 RIVERA's failure to make a claim under ERISA proves fatal to
20 his complaint. See Terry v. Bayer Corp., 145 F.3d 28, 40 (1st Cir.
21 1998) (ordinarily claimant must first exhaust plan's administrative
22 remedies); See also Morais v. Cent. Beverage Corp. Employees'
23 Supplemental Retirement Plan, 167 F.3d 709, 712 n.4 (1st Cir. 1999).
24

25 ³ Further, it is doubtful that AMERICAN AIRLINES, which is not
26 the Plan Administrator, is the proper party defendant in this
action. See i.e., Terry v. Bayer Corp., 145 F.3d at 35-6.

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2 Further, we agree with defendant's arguments that both the
3 claims for benefits as well as those sounding in tort are time-
4 barred. Additionally, there is no provision allowing for punitive
5 damages under either ERISA or local law.

6

CONCLUSION

7

8 Absent opposition and it appearing that defendant is entitled
9 to judgment as a matter of law, defendant's Motion to Dismiss
10 tendered on September 20, 1999⁴ is hereby **GRANTED**. Accordingly, the
11 complaint filed in this action is hereby **DISMISSED** based on the
12 arguments presented by defendant.

12

13

Judgment shall be entered accordingly.

14

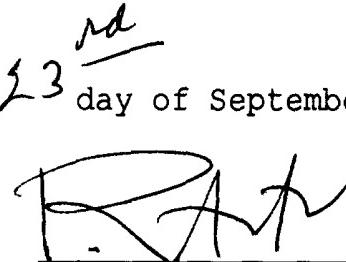
IT IS SO ORDERED.

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San Juan, Puerto Rico, this 23 day of September, 1999.

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RAYMOND L. ACOSTA

United States District Judge

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⁴ The Motion Tendering Motion to Dismiss, filed on September 20, 1999 (docket No. 21) is **GRANTED**.